FOR ARGUMENT

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In The
Supreme Court of the United States

DARIN L. MUEHLER AND ROBERT BRILL,

Petitioners,

v.

IRIS MENA,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR THE NATIONAL LATINO OFFICERS ASSOCIATION, THE NATIONAL BLACK POLICE ASSOCIATION, AND THE HISPANIC AMERICAN COMMAND OFFICERS ASSOCIATION AS *AMICI CURIAE* SUPPORTING RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

Amicus curiae National Latino Officers Association ("NLOA") is a fraternal and advocacy organization with a membership of 10,000 uniformed and civilian employees, predominantly within city and state law enforcement agencies. The mission of the NLOA is to create strong bonds between immigrant communities, particularly Latino communities, and various law enforcement agencies, while promoting candid and productive communication. Over many years, the NLOA, composed primarily of Latino officers, has gained a great deal of respect and trust within immigrant communities by advising residents of their rights, fighting discrimination, and facilitating a mutual dependence between these communities and law enforcement. The NLOA has testified before Congress, and its members regularly participate in local city council meetings regarding issues of discrimination and law enforcement.

Amicus curiae National Black Police Association ("NBPA") is a nationwide organization of African-American police associations, with approximately 35,000 members in 140 chapters, dedicated to fair and effective law enforcement. The NBPA has helped develop a strategy for community policing, with the hope of creating a cooperative relationship between minority officers and the communities they serve, that will in turn lead to increased public safety. The NBPA also aims to improve the relationships between police departments and minority populations by evaluating the effect of policies on minority

[1] This brief was not authored in any part by counsel for either party. In addition, no person or entity other than *amici curiae* and their counsel made a monetary contribution to the submission of this brief. Letters of consent by the parties to the filing of this brief have been lodged with the Clerk of this Court.

communities, recruiting minority police officers on a national scale, and teaching officers to act with professionalism and compassion in combating corruption, brutality, and racial discrimination.

Amicus curiae Hispanic American Police Command Officers Association ("HAPCOA") is the largest organization of Hispanic American command officers in the United States, with members in hundreds of law enforcement agencies. HAPCOA's members include chiefs of police, sheriffs, and police superintendents from around the country. HAPCOA's primary goal is to increase community involvement, understanding, and support through outreach efforts and the development of positive partnerships with other law enforcement associations, corporations, community groups, and non-profit organizations.

Amici are deeply concerned about the practical, real-world consequences this case could have for effective law enforcement. In particular, *amici* believe that Petitioners' suggested resolution of their first question presented – whether the police questioning of Respondent about her immigration status constituted an additional, unconstitutional seizure under the Fourth Amendment – is fundamentally oversimplified and invites a ruling unnecessary to a narrow disposition of this case. *Amici* thus write to inform the Court of important, negative policy consequences that would follow from a ruling authorizing or encouraging police officers to enforce immigration law as a caution against using this case to resolve this complex question. And, as the issue of the authority and propriety of police enforcement of immigration law was not argued or briefed in the lower courts, *amici* join Respondent in urging the Court to resolve this case on other grounds.

STATEMENT OF THE CASE

In this case, eighteen heavily armed officers of a police SWAT team executed a search warrant at Respondent Iris Mena's home where they believed the primary suspect in a gang-related drive-by shooting was living. The evidence at trial showed that at least one officer forcibly entered the locked bedroom where Respondent was sleeping, pointed a semi-automatic weapon at her face as she awoke, handcuffed her, and took her to a converted garage (J.A. 100-03) where she was detained until the two to three hour search of the premises was completed. J.A. 72; 192. During that detention, one of the police officers questioned Respondent, a lawful permanent resident, about her immigration status even though her status had no bearing on the criminal investigation that was the subject of the search. J.A. 106. When that officer, and the Immigration and Naturalization Service ("INS")[2] agent who accompanied the police (J.A. 159-60), demanded to see her immigration papers, Respondent replied that the papers were in a purse in her room. J.A. 106. The officer then obtained and searched the purse without her consent and handed the documentation to the INS agent. J.A. 106-07. The three other occupants of the premises were also questioned about their immigration status (J.A. 137), and one was taken into custody by the INS as a result of this questioning. J.A. 115-16. None of the occupants was asked about his or her connection to the suspect in the shooting or the gang to which he belonged.

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[2] Effective March 1, 2003, the Homeland Security Act of 2002 abolished the INS, transferring its functions from the Department of Justice to the Department of Homeland Security. *See* Pub. L. No. 107-296, § 471, 116 Stat. 2135 (codified as amended at 6 U.S.C. § 291(a) (2002)). Unless otherwise specified, the within brief uses the former nomenclature, which was used by the court below.

The jury concluded that Petitioners, the two officers who oversaw Respondent's detention, had violated her constitutional rights. J.A. 255. The Ninth Circuit affirmed. *Mena v. City of Simi Valley*, 332 F.3d 1255 (9th Cir. 2003). Specifically, the court determined that "the heightened security measures" were not justified under the circumstances. *Id.* at 1263-64. It further found that the officer's questions about Respondent's immigration status and search of her purse for proof thereof also rendered her detention unreasonable. *Id.* at 1264-66. The issue of whether this questioning constituted a separate constitutional violation was not argued by either party, at trial or on appeal, and was not reached by the Ninth Circuit. *See generally* Resp't Br.

SUMMARY OF ARGUMENT

In arguing that Respondent's Fourth Amendment rights were not violated when they questioned her about her immigration status, Petitioners attempt to cast this case as a straightforward criminal procedure case and, accordingly, make several dangerously flawed assumptions about the appropriate roles of state and local police and federal immigration officers. Petitioners and the United States as *amicus curiae* contend that questioning individuals about their immigration status is part of routine police work and serves an important government interest. Pet'r Br. at 22-23; Br. for the United States as *Amicus Curiae* at 26-27 n.10. *Amici* respectfully disagree.

The federal government, recognizing that immigration officials and state and local law enforcement entities are not similarly situated, has expressly delegated immigration law enforcement authority to the states only in certain specified areas, and there is no evidence that the Petitioners possessed such authority here. Enforcement of

federal immigration law, which is overwhelmingly *civil* in nature, is not, and never has been, a function of state and local law enforcement agencies, whose primary charge is the enforcement of state *criminal* law. And, while the enforcement of immigration law by state and local police may serve an important *federal* government interest, it runs counter to important state and local interests. *Amici* submit the within brief to urge the Court not to rule on the first question presented by Petitioners and to thereby avoid harmful consequences resulting from state and local enforcement of federal immigration law, as enumerated below.[3]

First, a perception that police can enforce routine immigration violations would have a devastating impact on community policing, which has become a critical crime-fighting strategy and counter-terrorism tool. Community policing depends upon establishing relationships of trust between local police and members of the community, including communities with significant populations of undocumented immigrants. Police officers across the country depend upon these relationships to obtain necessary information in narcotics, murder, robbery, rape, and other traditional criminal investigations. Moreover, partnerships between police and communities, particularly immigrant communities, have become increasingly important in the effort to prevent future terrorist attacks. Those relationships would be jeopardized and immigrants would become fearful of reporting crimes and suspicious activity

[3] *Amici* therefore urge this Court to resolve this case on the second question presented: whether, under *Michigan v. Summers*, 452 U.S. 692 (1981), the Ninth Circuit erred in ruling that Respondent's detention was unconstitutional because she was initially detained at gun-point and handcuffed for the duration of the search. However, *amici* take no position as to how the Court ultimately resolves this second question.

if they believed police were enforcing federal immigration laws, whether on their own or hand-in-glove with the INS.[4]

Second, a ruling that in any way adopts or endorses the proposition that police officers have inherent authority to inquire about a person's immigration status would inevitably burden state and local law enforcement agencies, which lack the training and resources to navigate the notoriously complicated world of immigration law. Already scarce state and local resources should instead be reserved for fighting state and local crimes. Moreover, state and local enforcement of immigration law would invariably expose police officers to criticism and liability for racial profiling, a practice in which INS agents routinely engage. A ruling sanctioning or encouraging statutorily unauthorized police questioning about an individual's immigration status in an effort to enforce federal immigration laws would contribute to a disturbing trend favored by some federal regulators to devolve immigration law enforcement to states and localities – a trend that not only fundamentally misapprehends the appropriate jurisdictional spheres of federal and state law enforcement, but that also threatens to further burden already strapped local law enforcement agencies.

In sum, because Petitioners' first question presented masks significant complexities involving the appropriate jurisdictional spheres of federal and state law enforcement

[4] The fact that an INS officer, who would potentially have been authorized to interrogate Respondent about her immigration status, was brought along by Petitioners on this raid does nothing to ameliorate *amici*'s concerns. As the facts of this case make clear, it was a police officer who first asked about Respondent's immigration status and who then searched Respondent's purse for the documents verifying that status as part of an immigration enforcement effort. J.A. 106-07. In any event, as shown below, police cooperation with the INS in this manner would be equally harmful to the promotion of trusting relationships between immigrants and police officers.

authority, raises the possibility that local law enforcement efforts will actually be hampered by Petitioners' proposed resolution, and, as Respondent demonstrates, does not benefit from the development of a full record below, *see generally* Resp't Br., *amici* urge the Court to resolve this case on other grounds.

ARGUMENT

IMMIGRATION LAW ENFORCEMENT IS, FOR GOOD REASON, A FEDERAL FUNCTION AND AUTHORIZING STATE AND LOCAL POLICE TO QUESTION PERSONS ABOUT THEIR IMMIGRATION STATUS IN AN EFFORT TO ENFORCE IMMIGRATION LAW WILL UNDERMINE THE EFFECTIVENESS OF LOCAL LAW ENFORCEMENT.

A. ENFORCEMENT OF FEDERAL IMMIGRATION LAW IS NOT AN IMPORTANT STATE OR LOCAL GOVERNMENT INTEREST.

In support of their argument that Respondent's constitutional rights were not violated when the police officer questioned her about her immigration status, Petitioners assert that "ascertaining the identity of illegal aliens serves an important government interest" and that the questions were "particularly proper" under the circumstances. Pet'r Br. at 22-23. Petitioners further assert that a rule prohibiting local police from asking individuals such questions would "upset settled and important law enforcement practices." Pet'r Br. at 22. The United States as *amicus curiae* similarly warns against "hamper[ing] the ability of government officials" to obtain information from individuals about their immigration status. Br. for the United States as *Amicus Curiae* at 23.

Petitioners and the United States thus attempt to cast this case as a paradigmatic criminal procedure case in

which the interests of effective law enforcement must be balanced against the protections of individual liberty secured under the Fourth Amendment. Instead, however, this case implicates complex and increasingly prevalent issues related to the enforcement of federal immigration law. *Amici* thus urge the Court not to adopt the constrained perspective suggested by Petitioners and the United States in their proposed resolution of the first question presented or in any way to endorse the view that police possess inherent authority to enforce immigration law.

By claiming that enforcement of immigration law serves "an important government interest," Petitioners oversimplify the issues presented in this case in two important and related respects. First, the enforcement of immigration law may well be an important *federal* government interest, but it is not an important *state* or *local* government interest.[5] Congress' division of authority, as described below, reflects a sound understanding of the appropriate roles of local and federal law enforcement: local police understand and care about how to prevent and solve crimes within their jurisdictions but have neither the training nor the resources to undertake federal immigration law enforcement. Indeed, authorizing or otherwise

[5] This assertion is abundantly supported by the existence of state and local ordinances and statutes prohibiting the enforcement of federal immigration law by state and local officials. *See, e.g.*, H.R.J. Res. 22, 23rd Leg. 1st Sess. (Alaska 2003); Or. Rev. Stat. § 181.850 (2003); Anchorage, Alaska, Res. 223-2003 (July 15, 2003); Chandler, Ariz., Police General Order E-17 § 300 (Mar. 1, 1999); L.A., Cal., Special Order 40 (November 27, 1979); S.F., Cal., Code § 12H.2. (1989); Takoma Park, Md., Ordinance No. 2002-82 (Oct. 28, 2002); Takoma Park, Md., Ordinance No. 1985-63 (Oct. 28, 1985); Detroit, Mich., Local Resolution To Protect Civil Liberties (Nov. 27, 2002); Minneapolis, Minn., Mun. § 19.30 (2003); N.Y., N.Y., Res. No. 60 (Feb. 4, 2004).

encouraging state and local enforcement of immigration law would undermine the ability of officers on the street to perform their central and predominant function of fighting crime and protecting the communities they serve.

Second, questioning of suspects by local police can serve an "important government interest" when it is directed towards the enforcement of state *criminal* law. *See Hiibel v. Sixth Judicial Dist. Ct. of Nev.*, 124 S. Ct. 2451, 2455-56 (2004) (police questioning about identity to investigate assault); *Florida v. Bostick*, 501 U.S. 429, 432-33 (1991) (police questioning to obtain consent to search for narcotics on bus); *Terry v. Ohio*, 392 U.S. 1, 5-7 (1968) (police stop and questioning to prevent armed robbery). However, it is hornbook law that being an undocumented or "illegal" alien is a violation of federal *civil* or *administrative* immigration law, enforceable by the INS through immigration courts. *See, e.g.*, Richard D. Steel, *Steel on Immigration* § 16:1 (2d ed. 2004) ("The immigration process, including removal, is civil. While removal involves both procedural and substantive similarities to the criminal process, it has been repeatedly held to be civil."); *see also* 8 U.S.C. § 1227 (1999 & Supp. 2004) (listing grounds of deportability as civil immigration violations); *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984) ("A deportation proceeding is a purely civil action to determine eligibility to remain in this country . . . ."). Relatively few immigration violations are criminal in nature. *See* Stephen H. Legomsky, *Immigration and Refugee Law and Policy* 618, 1118 (3d ed. 2002) (reporting that in fiscal year 1998, over 1.5 million noncitizens required to leave the United States did so by voluntary departure and about 93,000 noncitizens were ordered deported, whereas just over 21,000 noncitizens were criminally convicted of immigration violations) (citing INS 1998 Statistical Yearbook). State and local officers may enforce a narrow subset of those

violations, but only when expressly authorized to do so by Congress.[6] *See generally* Br. for the ACLU as *Amicus Curiae*. Thus, the interest of local police in the enforcement of what is predominantly civil immigration law is far narrower than that of the INS and is, in any event, substantially outweighed by its costs, as described below.

Furthermore, Petitioners casually suggest that all that is at issue in this case is "mere [police] questioning" "related

[6] It is unclear from the record whether the police in this case were acting under such authority. *See generally* Br. for the American Civil Liberties Union ("ACLU") as *Amicus Curiae*. In support of their casual suggestion that the officers in this case were actually investigating criminal activity, Petitioners cite 8 U.S.C. § 1304(e) (1999), Pet'r Br. at 25-26, which provides that an alien, including a lawful permanent resident, may be convicted of a misdemeanor for failing to carry his alien registration card, assuming such card has been issued to him. Even if state and local police have authority to enforce this provision pursuant to California law, and are not pre-empted from doing so under federal law, *see* Brief for the ACLU as *Amicus Curiae*, the provision is very limited in scope. *See United States v. Campos-Serrano*, 404 U.S. 293, 299-300 (1971) (holding that the purpose of section 1304(e) is to identify bearer as lawfully registered alien residing in the United States and to govern that alien's activities within this country under the immigration laws); *see also United States v. Ritter*, 752 F.2d 435, 438 (9th Cir. 1985) (stating that alien registration helps facilitate work of INS officials at border checkpoints). Petitioners thus improperly view this provision as a sweeping mandate to enforce any civil immigration law violation by asking individuals about their immigration status. *See Mountain High Knitting v. Reno*, 51 F.3d 216, 219 (9th Cir. 1995) (holding that "§ 1304(e) arrest power does not permit 'rounding up the suspects' *simply* in order to investigate aliens' immigration status").

Moreover, in order for the officers' suspicion about Respondent's potential violation of this provision to have been reasonable, the officers would actually have had to suspect that Respondent was a legal permanent resident who failed to carry her documentation. The context of their questioning and its characterization in Petitioners' brief, however, reveal their true suspicion: that Respondent was, like other residents of the house under search, actually an *undocumented* immigrant. Pet'r Br. at 23-24.

to identity" with minimal intrusion or consequence. Pet'r Br. at 15. However, this characterization masks what *amici* perceive is an attempt to obtain blanket approval of routine police enforcement of federal immigration law. As the circumstances of the aggressive and obviously planned SWAT team search and questioning in this case reveal, the police officers and INS agent were plainly intent on enforcing state criminal and federal immigration law. Indeed, this case highlights the troubling trend of devolving the enforcement of immigration law to states and localities. Just recently, and in contravention of long-standing U.S. government policy, *see* Memorandum from Seth Waxman, Associate Deputy Attorney, to the U.S. Attorney for the Southern District of California (Feb. 5, 1996), *available at* http://www.usdoj.gov/olc/immstopo1a.htm, the Attorney General suggested that state and local police officers possess "inherent authority" to enforce immigration law. *See* Attorney General John Ashcroft, Prepared Remarks on the National Security Entry-Exit Registration System (June 6, 2002) (transcript available at http://www.usdoj.gov/ag/speeches/2002/060502agpreparedremarks.htm). The Attorney General has also directed the Department of Homeland Security and the FBI to begin entering certain categories of civil immigration information into the FBI's National Crime Information Center database, thus inducing state and local officers who access the database millions of times each day to engage in the arrests of suspected immigration violators. *See National Council of La Raza v. Ashcroft*, No. 03-CV-6324 (E.D.N.Y. *filed* Dec. 17, 2003) (action to enjoin entry and dissemination of such information); *see also* Michael J. Wishnie, *State and Local Police Enforcement of Immigration Laws*, 6 U. Pa. J. Const. L. 1084, 1094-95 (2004). *Amici* urge this Court to resist endorsing this dangerous trend when fashioning a ruling in this case in light of the substantial complexities

inherent in the Petitioners' first question presented, as well as the adverse policy consequences of allowing police to question persons about immigration status in an effort to enforce immigration law.[7] Accordingly, *amici* urge this Court to resolve this case on other grounds. *See supra* note 3, at 5.

B. AUTHORIZING LOCAL LAW ENFORCEMENT OFFICERS TO QUESTION INDIVIDUALS ABOUT THEIR IMMIGRATION STATUS IN AN EFFORT TO ENFORCE IMMIGRATION LAWS WOULD SIGNIFICANTLY HAMPER EFFORTS OF STATE AND LOCAL POLICE TO FIGHT CRIME AND TERRORISM.

Law enforcement agencies across the country have embraced community policing models in recognition of the importance of cooperation between police and the communities they serve in solving problems of crime and public safety. *See generally* Dennis J. Stevens, *Case Studies in Community Policing* (Prentice Hall 2001). In particular, "[t]he community policing approach to law enforcement seeks to address the causes of crime and reduce the fear of crime and social disorder through problem-solving strategies and police-community partnerships. A fundamental shift from traditional reactive policing, community policing strives to prevent crime before it occurs." Matthew J. Hickman and Brian A. Reaves, *Community Policing in Local Police Departments, 1997 and 1999*, U.S. Dep't of Justice, Bureau of Justice Statistics (Feb. 2001). Under this model, an entire community, rather than the police alone, takes responsibility for crime prevention and criminal law enforcement. *See, e.g.*, Jerome K. Skolnick & David H. Bayley, *The New Blue Line: Police Innovation in Six American Cities* 212 (Free Press 1986); *Bandera v. City of Quincy*, 220 F. Supp. 2d 26, 32 (D. Mass. 2002) ("Community policing encourages the community to maintain order and keep neighborhoods safe. By involving members of the civilian community to identify problem areas in the community and shape solutions, community policing recognizes that it is the members of the community who, as much as police officers, are responsible for safeguarding the welfare of their community.").

Indeed, in recent years, community policing has become the predominant law enforcement policy model at the state and local level. According to the Department of Justice,

> [s]tate and local law enforcement agencies had nearly 113,000 community policing officers or their equivalents during 1999, compared to about 21,000 in 1997. This included 91,000 local police officers in 1999, up from 16,000 in 1997 . . . [and] 64% of local police departments serving 86% of all residents had fulltime officers engaged in community policing activities during 1999, compared to 34% of departments serving 62% of residents in 1997.

Matthew J. Hickman and Brian A. Reaves, *Community Policing in Local Police Departments, 1997 and 1999*, U.S. Dep't of Justice, Bureau of Justice Statistics (Feb. 2001); *see also* Steven G. Brandl, *Reflections on the Criminal Justice System after September 11, 2001: Back to the Future: The Implications of September 11, 2001 on Law*

[7] *Amici* do not mean to suggest that police should never be allowed to inquire about a person's immigration status. There may well be certain limited circumstances, unrelated to enforcement of immigration law, in which such an inquiry would be appropriate. For example, as part of a domestic violence investigation, a police officer may need to know if the abuser threatened the victim with deportation. Police, however, should only be able to ask about a person's immigration status under such circumstances if the questioning is unrelated to the enforcement of federal immigration laws.

Enforcement Practice and Policy, 1 Ohio St. J. Crim. L. 133, 140 (2003) (noting that "[t]he community problem-solving era is considered to be the predominant style of policing today" and "[c]ommunity policing is the cornerstone of the community problem-solving era").

The community policing model depends heavily on fostering relationships of trust between immigrant groups and law enforcement agencies, and *amici* have devoted substantial efforts to building these relationships with a wide variety of immigrant communities. Evidence suggests that community policing has successfully lowered crime rates in immigrant communities. Department of Justice statistics show that although the non-fatal violent crime rate dropped 44% between 1993 and 2000 for the general population, it dropped 56% for Latino populations. Callie Marie Rennison, *Criminal Victimization 2000; Changes 1999-2000 with Trends 1993-2000*, U.S. Dep't of Justice, Bureau of Justice Statistics (June 2001); Callie Marie Rennison, *Violent Victimization and Race, 1993-98*, U.S. Dep't of Justice, Bureau of Justice Statistics (Mar. 2001). This decrease has been attributed, at least in part, to the growing trust between Latino communities and law enforcement officials. *See, e.g.*, Ricardo Alonso-Zaldivar, *Crimes Against Latinos Decrease*, L.A. Times, Apr. 8, 2002, at 11A.

Undocumented and even many documented immigrants fear deportation; that fear must be overcome in order for immigrants to communicate and cooperate with police. Studies show that immigrants have tended to underreport crimes – either as victims or witnesses – because they fear that interaction with police officers may lead to negative immigration consequences. *See* Robert C. Davis et al., *Access to Justice for Immigrants Who Are Victimized: The Perspectives of Police and Prosecutors*, 12

Crim. Just. Pol'y Rev. 183, 187 (2001) (reporting that a DOJ-sponsored study demonstrated that two-thirds of district attorneys and chiefs of police from the 50 largest cities believed that recent immigrants underreport crimes). Indeed, the President of the United States has recognized the basic reality that when undocumented immigrants "are victimized by crime, they are afraid to call the police, or seek recourse in the legal system." President George W. Bush, New Temporary Worker Program: Remarks on Immigration Policy (Jan. 7, 2004) (transcript available at http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html). Past experience also confirms that police enforcement of immigration laws will create a chilling effect among undocumented immigrants, making them afraid to approach police when they are victims of crimes and easy targets for those who prey on that fear.[8]

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[8] Several jurisdictions have reported such incidents. *See* Lesley Téllez, *Finding a Place to Turn; Police Seek to Ease Crime Victims' Fear of Being Deported*, Dallas Morning News, Dec. 11, 2003, at 1Q (reporting that in Lewisville, Texas, an immigrant witnessed a murder but refrained from contacting the authorities for several months because of fear of immigration-related consequences); Natashia Gregoire, *Police Appeal for Clues in Slaying of Mom, Son*, Tampa Tribune, July 22, 2003, Metro, at 1 (reporting concern of Tampa, Florida, police that Mexican immigrants who had knowledge about a double murder were afraid to come forward and police efforts to assure the community that the police have no interest in their immigration status); David Hench, *Volatile Cleaner Started Fatal Fire; Four Seng Thai Workers Fled the State After the Fire, Delaying the Work of Investigators*, Portland Press Herald, March 3, 2001, at 1A (reporting that in Portland, Maine, officials investigating a restaurant fire were unable to question the restaurant's Thai employees because the employees had fled the scene of the fire out of a fear that they would be deported); Mirta Ojito, *Captive in Queens; Neighbors' Response to Trouble is Silence*, N.Y. Times, July 21, 1997, at B5 (reporting that fifty-eight deaf Mexican workers who had been smuggled into the United States and were found living in virtual slavery and subject to beatings and rapes while trapped in small, crowded apartments in New York City, and their neighboring witnesses, were afraid to go to the police for fear of being deported).

Amici are further concerned that police questioning regarding immigration status will create an especially strong chilling effect among victims of domestic violence, given the prevalence of domestic violence in immigrant communities. *See* Robert C. Davis & Edna Erez, *Immigrant Populations as Victims: Toward a Multicultural Criminal Justice System*, Nat'l Inst. of Justice: Research in Brief, May 1998 (reporting that "[d]omestic violence was the largest category of victimization reported by immigrant victims"). Congress itself has acknowledged this danger.

> One of the main purposes behind the Violence Against Women Acts in 1994 and 2000 was to make it possible for women and children who were victims of crimes to be able to report these crimes to law enforcement. Abusers often told their victims they would be deported and never see their children again if they reported the abuse to the police.

Janet Calvo, *A Decade of Spouse-Based Immigration Laws: Coverture's Diminishment, But Not its Demise*, 24 N. Ill. U. L. Rev. 153, 207 (2004); *see also* 8 U.S.C. § 1154(a)(1)(A)(iii) (1999 & Supp. 2004); *id.* § 1154(a)(1)(B)(ii) (1999 & Supp. 2004). Battered immigrant women need to be able to access law enforcement entities without fear that they or their abusers will be deported. Police departments have implemented programs in an attempt to reach out to battered immigrant women and children; however, this progress will be reversed by local enforcement of immigration law. Craig E. Ferrell, Jr., *Immigration Enforcement: Is it a Local Issue?*, The Police Chief, June 2004.

Police also increasingly rely on immigrant communities for terrorism-related information in particular. Attorney General John Ashcroft believes that "immigrants [are] in an especially good position to learn of terrorist plots or witness unusual behavior among people in their community." Neil Lewis, *Immigrants Offered Incentives To Give Evidence on Terrorists*, N.Y. Times, Nov. 29, 2001, at 7B;

see also William Lyons, *Partnerships, Information and Public Safety*, 25 Policing 530 (2002) ("A successful war on terror depends on information."); *United States v. Khan*, 324 F. Supp. 2d 1177, 1181 (D. Colo. 2004) (noting that an alleged immigration violator was "a potential witness in an underlying terrorism investigation"). Similarly, President Bush, in promoting a proposed bill that would give certain undocumented workers lawful immigration status, stated that if immigrants are unafraid of deportation, they will report crimes more freely, allowing "[l]aw enforcement [to] be better able to focus on the true threats to our nation from criminals and terrorists." President George W. Bush, New Temporary Worker Program: Remarks on Immigration Policy (Jan. 7, 2004) (transcript available at http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html).

Likely recognizing the negative effect that local involvement in the enforcement of immigration laws would have on cooperation with the police, scores of jurisdictions have adopted policies prohibiting law enforcement officials from inquiring into a person's immigration status. *See, e.g.*, Or. Rev. Stat. § 181.850 (2003); Chandler, Ariz., Police General Order E-17 § 300 (Mar. 1, 1999); L.A., Cal., Special Order 40 (November 27, 1979); S.F., Cal., Code § 12H.2. (1989); Takoma Park, Md., Ordinance No. 1985-63 (Oct. 28, 1985); Detroit, Mich., Local Resolution To Protect Civil Liberties (Nov. 27, 2002); Minneapolis, Minn., Mun. § 19.30 (2003). In addition, the United States Congress has enacted provisions that reward undocumented immigrants with lawful status in exchange for valuable crime-related or terrorism-related information. *See* 8 U.S.C. § 1101(a)(15)(S) (1999 & Supp. 2004) (enacted by Violent Crime Control Enforcement Act of 1994, Pub. L. No. 103-322, § 130003, 108 Stat. 1796, 2024) (granting lawful status to persons who have critical information regarding "a criminal organization or enterprise" or "a terrorist organization, enterprise, or operation"); 8 U.S.C. § 1101(a)(15)(T) (Supp. 2004) (enacted by

Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 107(e)(1), 114 Stat. 1464, 1474-75) (granting lawful status to victims "of a severe form of trafficking in persons"); 8 U.S.C. § 1101(a)(15)(U) (Supp. 2004) (enacted by Battered Immigrant Woman Protection Act, § 1513, 114 Stat. at 1533) (granting lawful status to persons subjected to "substantial physical or mental abuse" resulting from a number of crimes, including rape, torture, involuntary servitude, kidnapping, extortion, and assault). These provisions not only demonstrate Congress' view that criminal law enforcement interests are equally, if not more, compelling than immigration enforcement interests, but also plainly reveal its recognition that immigrants are more likely to come forward with valuable crime-related information if they do not fear immigration-related consequences.

Amici and countless police jurisdictions have spent years developing relationships of trust with their communities by dissociating themselves from immigration officials. *Amici* worry that even if only some officers engage in questioning to enforce immigration law, the effect of their actions will be sufficient to chill immigrant cooperation even in those jurisdictions where officers properly refrain from doing so. Accordingly, police officers, police departments, and others around the country have publicly expressed their fears that if local law enforcement officials become involved in enforcing immigration laws, their efforts to reach out to immigrant communities will be derailed.[9]

[9] According to a spokesperson for the International Association of Police Chiefs, "[i]f local police are seen as local immigration officials, there's a concern that immigrants won't report crimes, which will then lead to an increase in crime in communities." Lesley Tellez, *Police Seek to Ease Crime Victims' Fear of Being Deported*, Dallas Morning News, Dec. 11, 2003, at 1Q; *see also* Karen Brandon, *U.S. Weighs Local Role on*

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In addition, *amici* believe that immigrants, even legal immigrants, will be less likely to trust the police if they feel they are being targeted based on their race, religion, ethnic appearance, or accent. It is well documented that federal immigration officials routinely use tactics similar to racial profiling in enforcing immigration laws. *See* Kevin R. Johnson, *The Case Against Race Profiling in Immigration Enforcement*, 78 Wash. U. L.Q. 675, 688 (2000) (stating that "[r]ace profiling also remains part and parcel of the enforcement of a body of immigration law"). In the post-9/11 context, for example, the INS has targeted Muslim and Arab immigrants. *See, e.g.*, Marie A. Taylor, *Immigration Enforcement Post-September 11: Safeguarding the Civil Rights of Middle Eastern-American and Immigrant Communities*, 17 Geo. Immigr. L.J. 63 (2002) (discussing the FBI and INS's use of racial profiling in Arab and Muslim communities in the fight against terrorism).

Immigration, Chicago Tribune, Apr. 14, 2002, Zone C, at 10; Mia Taylor, *Cobb Police Unit Combats Hispanic Gang Lure*, Atlanta Journal-Constitution, Dec. 12, 2002, at 1JF; Tim Steller, *Expansion of Foreigner Arrest Plan is Feared*, Arizona Daily Star, July 12, 2002; *Value, Legality Debated as Local Police Become Immigration Cops*, Hispanic Link Weekly Report (Los Angeles), June 9, 2003; Eric Schmitt, *Administration Split on Local Role in Terror Fight*, N.Y. Times, Apr. 29, 2002, at A1; Louie Gilot, *Immigration Proposal Puts Burden on Police*, El Paso Times, Oct. 9, 2003, at 2A; Richard Abshire, *Scams Prey on Migrants: Non-English Speakers May Face Questionable Business Dealings*, Dallas Morning News, Aug. 27, 2003, at 1R; *HPD Policy on Aliens is Hands-Off: Status of Immigrants Viewed as Federal Issue*, Houston Chronicle, March, 3, 2003, at A15; Oscar Avila, *Bill Imperils Immigrants' Fragile Trust in Police*, Chicago Tribune, Mar. 31, 2004, Zone C, at 1; Michael Easterbrook, *Durham Resolution Galvanizes Advocates*, Raleigh News & Observer, Oct. 22, 2003, at B1; Bill Novak, *County May Stiff the Feds On Information About Immigrants*, Capital Times (Dane County, WI), Dec. 18, 2003, at 1B.

This Court has sanctioned limited reliance by INS officials on race or ethnic appearance in enforcing immigration laws, holding that such appearance can be a factor supporting the reasonable suspicion necessary to stop and question individuals based upon the belief they are in the country illegally. *United States v. Brignoni-Ponce*, 422 U.S. 873, 886-87 (1975). In fact, INS officers admit to routinely relying on a person's "foreign appearance" as a factor in determining whether to make such stops. *See, e.g., United States v. Cruz-Hernandez*, 62 F.3d 1353, 1355-56 (11th Cir. 1995); *United States v. Franco-Munoz*, 952 F.2d 1055, 1056 (9th Cir. 1991). Petitioners, by stating that Respondent's Salvadorian accent was the reason for the officer's questioning about her immigration status, argue that this rule should be extended to apply to police officers. Pet'r Br. at 24 (citing *Brignoni-Ponce*, 422 U.S. at 886-87).

Amici find Petitioners' position disturbing. The sanctioned reliance on race by INS agents may have been justified because those agents are responsible solely for enforcing immigration law and preventing noncitizens from entering the country illegally. *See Brignoni-Ponce*, 422 U.S. at 878 ("The Government makes a convincing demonstration that the public interest demands effective measures to prevent the illegal entry of aliens at the Mexican border."). However, if local police officers engage in racial profiling in deciding to question persons about their immigration status, those officers will eviscerate the relationships that police departments have worked hard to develop with immigrant communities – relationships that are necessary to effectively enforce the thousands of non-immigration related crimes in their jurisdictions in general and to productively investigate terrorism-related crimes in particular. *See* William Lyons, *Partnerships, Information and Public Safety*, 25 Policing 530 (2002) (stating that racial profiling is counterproductive because

it makes it "more difficult for citizens in those communities with the information we seek to communicate effectively crime- or terror-related information, and thereby discourage[s] their willingness to work with the police").[10] Indeed, this Court has itself acknowledged the harms that can result when local law enforcement engages in racial profiling. *See Illinois v. Wardlow*, 528 U.S. 119, 135 n.9 (2000) (stating that "a recent survey of 650 Los Angeles Police Department officers found that 25% felt that 'racial bias (prejudice) on the part of officers toward minority citizens currently exists and contributes to a negative interaction between police and the community'") (internal citation omitted). The perception that local police engage in profiling as part of immigration law enforcement would also significantly undermine trust among immigrants who lawfully reside in this country and whose allegiance is manifestly critical to fighting the war on terror. *See* Michelle Waslin, *Immigration Enforcement by Local Police: The Impact on the Civil Rights of Latinos*, National Council of La Raza, Issue Brief No. 9, Feb. 2003; Deborah

[10] Police officers have expressed similar concerns. *See, e.g.*, Michelle Mittelstadt, *U.S. May Let State, Local Authorities Enforce Federal Immigration Laws*, Dallas Morning News, April 3, 2002 (quoting an officer in San Joaquin County Sheriff's Office as saying, "[r]acial profiling . . . could intensify if police are tasked with upholding immigration laws"); Craig E. Ferrell, Jr., *The War on Terror's 'Absconder Initiative,'* Police Chief, Oct. 2002, at 12 (stating that "many local agencies are usually not equipped or trained to enforce immigration laws without running afoul of their state and local statutes, such as those prohibiting racial profiling"). In addition, public awareness of racial profiling by immigration agents or local law enforcement is evidenced by the existence of terms such as "driving while black" and "flying while Arab." *See, e.g.*, David A. Harris, *The Stories, the Statistics, and the Law: Why "Driving While Black" Matters*, 84 Minn. L. Rev. 265 (1999); Ellen Baker, Comment, *Flying While Arab – Racial Profiling and Air Travel Security*, 67 J. Air L. & Com. 1375 (2002).

Ramirez et al., *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned*, U.S. Dep't of Justice, at 4 (2000) (reporting that recent survey data confirms that there is "a strong connection between perceptions of race-based stops by police and animosity towards local and state law enforcement").

In sum, in asserting that enforcement of immigration law is an important government interest, Petitioners overlook that INS agents do not share the same interest as police officers in gaining the trust and cooperation of immigrant communities, and thus fail to recognize the grave dangers to the public safety that state and local enforcement of immigration law can pose. Accordingly, *amici* join Respondent in urging this Court to avoid reaching this complex and consequential issue when deciding this case.

C. BECAUSE STATE AND LOCAL LAW ENFORCEMENT AGENCIES HAVE NEITHER THE RESOURCES NOR THE TRAINING TO HANDLE THE COMPLEXITIES OF IMMIGRATION LAW ENFORCEMENT, THEY WOULD BE SIGNIFICANTLY BURDENED BY THE INEVITABLE CONSEQUENCES OF A RULING THAT AUTHORIZES OFFICERS TO ENFORCE FEDERAL IMMIGRATION LAWS.

Unlike the INS, states and localities are not properly situated, nor adequately equipped, to enforce federal immigration laws. A ruling that authorizes or otherwise encourages police officers to inquire into a person's immigration status as part of immigration law enforcement would divert already scarce state and local resources from current policing priorities and obligate police to master the intricacies of immigration law. In addition, such a ruling would put police officers at risk of liability for violating a

number of constitutional provisions, federal and state statutes, and state and local ordinances and resolutions – a risk not equally faced by INS agents. Therefore, any purported benefits from enhanced enforcement of federal immigration laws would be dramatically outweighed by the loss of resources devoted to traditional crime prevention efforts.

1. Scarce State and Local Resources Should be Reserved for State and Local Law Enforcement

Data uniformly demonstrate that since the events of September 11, 2001, cities and towns across America have experienced severe financial strain. Michael A. Pagano, *City Fiscal Conditions in 2003*, Research Reports on American Cities, at iv – vi (reporting data collected by the National League of Cities that demonstrate historic budget shortfalls and deteriorating financial conditions in U.S. cities and their expected continuation into the foreseeable future). These fiscal shortfalls have had a significant impact in the area of public safety, where demand for services has steadily increased since 2001. *Id.* at 6-10 (reporting a significant increase in public safety needs and the strain such needs are increasingly imposing on city budgets); *see also* Christy Whitehead, *Budget Cuts More Than Layoffs*, Law and Order, Aug. 2004, at 102 (quoting National League of Cities survey reporting that, in 2003, "thirteen percent of cities reported that they had to lay off police due to tighter fiscal conditions and budget cuts and one in three cities anticipates possible layoffs in the near future"); Christopher Hoene, Mark Baldassare, Christiana Brennan, *Homeland Security and America's Cities*, Research Brief on America's Cities, Dec. 2002, at 6 (finding, based on the surveys of 725 city officials, that "[a]mid already declining fiscal conditions, the additional public

safety costs incurred by cities place them in an increasingly precarious position"). For example, in January 2003, the U.S. Conference of Mayors found that cities have spent more than $2.6 billion on "'additional security costs' since the 2001 terrorist attacks." Mark Preston, *Funding Cuts Hit Cities from All Sides,* American City & County, Jan. 2003, at 12. The former President of the International Association of Chiefs of Police, Joseph Samuels Jr., explained the dire situation of many resource-starved agencies in the post-9/11 world:

> [The] lack of resources has affected their confidence, as very few agencies feel adequately prepared to prevent or respond to a terrorist act or other major disaster. Law enforcement professionals are supposed to serve as the guardians of America's communities, but it is difficult for them to perform their jobs when, currently, they do not feel they can protect their communities adequately or reassure their communities honestly.

International Association of Chiefs of Police Press Release, *Police Chiefs Offer Priority List of Anti-Terror Needs*, June 15, 2003, at 1.

Further deepening this crisis, the federal government has abandoned much of the funding of local policing initiatives undertaken in the 1990s. Eli Lehrer, *Less Money From Washington*, American Enterprise, Jan/Feb. 2004, at 57. In addition, proposed funding cuts for the Community Oriented Policing Services (COPS) and the Local Law Enforcement Block Grant (LLEBG) program will have a particularly detrimental impact on already beleaguered local policing agencies.[11]

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[11] Tom Cochran, Executive Director of the U.S. Conference of Mayors, explains, "[m]any cities use the COPS and LLEBG money to put additional police officers on the streets." *Cities, Towns Oppose Cuts*

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Amici are concerned about the ability of state and local police departments to assume the additional burden of policing immigration violations at the same time that municipalities are experiencing unprecedented burdens and the worst budget crises in a decade. Moreover, the federal government's failure to adequately support existing partnerships to fight terror and provide security indicates that states and localities will likely be left to shoulder the accompanying financial burdens on their own. These additional resources could only come from already scarce criminal law enforcement budgets. As this Court has acknowledged, "[a] police department, like any organization with limited resources, allocates its resources to activities most likely to result in the detection or prevention of crime." *California v. Rooney*, 483 U.S. 307, 323 (1987). State and local resources should be used to achieve state and local interests. The consequence of a ruling authorizing or otherwise encouraging local agencies to assume responsibility for immigration enforcement would be to further deplete the scarce resources devoted to the core local law enforcement duties of investigating state crimes and protecting local communities.[12]

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in Aid to Police, Crime Control Digest, Feb. 13, 2004, at 2. National League of Cities President John DeStefano Jr., Mayor of New Haven, Connecticut, has expressed a concern shared by *amici*: "[T]he federal government is doing away with the COPS and other pertinent grants to local governments. How can we guarantee public safety if the federal government walks away from this partnership?" Lance Davis, *Panel Discusses Impact of Budget Crisis on Cities*, Nation's Cities Weekly, June 2, 2003, at 1.

[12] Police departments across the country have publicly expressed concerns about the drain on resources that local enforcement of immigration laws would cause. As stated by an official of the Dallas Police Association, "[t]he strain on local police already is enormous, and to ask us to arrest and detain immigrants is something the federal government needs to address by funding the INS some more and hiring

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2. Authorizing Police Officers to Enforce Immigration Law Without Adequate Training Will Lead to Costly Mistakes and Expose Officers to Liability.

Immigration laws are indisputably complex. *See, e.g.*, *Drax v. Reno*, 338 F.3d 98, 99 (2d Cir. 2003) (describing modern immigration law as "labyrinthine" and "a maze of hyper-technical statutes and regulations that engender waste, delay, and confusion"); *United States v. Oliveros*, 275 F.3d 1299, 1307 (11th Cir. 2001) (describing immigration law as "an area in which the law is unsettled, complex, and confusing"); *Castro-O'Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1988) ("With only a small degree of hyperbole, the immigration laws have been termed second only to the Internal Revenue Code in complexity.") (internal quotation marks and citation omitted); *Lok v. INS*, 548 F.2d 37, 38 (2d Cir. 1977) (noting "the striking resemblance between [immigration] laws ... and King Minos's labyrinth in ancient Crete"); *Domokos v. Hollander*, No. 97-C-6194, 1997 WL 570748, at *1 (N.D. Ill. Sept. 8, 1997) ("Immigration laws and their application present a particularly dense thicket, one that is essentially impenetrable to all lawyers other than those who practice

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additional personnel." Michelle Mittelstadt, *U.S. May Let State, Local Authorities Enforce Federal Immigration Laws*, Dallas Morning News, Apr. 3, 2002. Local law enforcement officials in several other jurisdictions have expressed this sentiment. *See, e.g.*, Sheila Burke, *Midstate Auth. Balk at Possibly Enforcing Immigration Laws*, The Tennessean, Apr. 15, 2002, at 7B; Sixto Molina, Editorial, *Immigration Role Not for Local Police*, Tucson Citizen, Oct. 15, 2003, at 4B; Dina Bunis and Minerva Canto, *Immigrants Worried, Coe Pleased by Proposal*, Orange County Register, Apr. 4, 2002; Thomas Ginsberg & Maria Panaritis, *U.S. Agents Limit Scrutiny of Illegal-Immigrant Arrests*, Philadelphia Inquirer, Sept. 9, 2003, at A1; Tony Coleman, *Measure Targets Immigrants' Fears*, St. Paul Pioneer Press, Dec. 27, 2003, at B1.

in that area of the law with great regularity. For a layman that density is total ...."). Accordingly, immigration agents undergo a rigorous, comprehensive training program that orients them to the complexities of federal immigration law and its enforcement. As the official Bureau of Immigration and Customs Enforcement website reports:

> The Immigration Enforcement Agent basic training course is an approximately 4-and-a-half month residential program, and includes instruction in both academics and physical training. Academics include training in the following subject areas: Immigration Law, Alien Removal Process and Procedures, Fraudulent Document Detection, Immigration and Naturalization Act Statutory Authorities (Detention, Arrest, etc.), Behavioral Science, Constitutional Law, Conspiracy Law, Criminal Law, Fugitive Operations, Civil Liberties and Liabilities and Spanish Language.

Immigrant Enforcement Agent, Bureau of Immigration and Customs Enforcement, *at* http://www.ice.gov/graphics/careers/invest/invest_iea.htm (last visited Nov. 3, 2004); *see also Lewis v. Smith*, 731 F.2d 1535, 1538 (11th Cir. 1984) (reporting that "the INS provides firearms training, Spanish lessons, familiarity with immigration laws and procedures and investigative techniques"). Such intensive training is important to ensure, among other things, that immigration agents do not wrongfully target a person who has a legal right to be in the United States.

Police officers, who receive no training in the intricacies of immigration law, are bound to make mistakes, exposing them to liability for their improper actions. Indeed, the federal government recognizes that adequate training of police officers is a prerequisite to granting them any limited, express authority to enforce immigration law. In enacting one of the narrow provisions that

expressly authorizes the Attorney General to enlist local officers to enforce immigration law, Congress specifically directed that those officers receive adequate immigration enforcement training. *See* 8 U.S.C. § 1357(g)(2) (1999) (requiring a "written certification that the officers or employees . . . have received adequate training regarding the enforcement of relevant Federal immigration laws"). This provision demonstrates Congress' recognition that enforcement of federal immigration law by state and local police without the proper training is fraught with danger. Such enforcement would force states and localities into a no-win situation: either they expend substantial resources to train officers in the complexities of immigration law or expend substantial resources defending their mistakes after they occur.

Moreover, as discussed above, racial profiling is a routine aspect of immigration law enforcement. *See* discussion *supra* Part B. *Amici* are concerned that the racial profiling likely to result from police enforcement of immigration law will also put officers at risk of liability and further burden states and localities. In particular, while it may be permissible to use race as one factor among others in enforcing immigration law, *see Brignoni-Ponce*, 422 U.S. at 886, *amici* fear that untrained police officers will engage in improper racial profiling by relying *solely* on characteristics such as skin color or a foreign-sounding accent in deciding whether to question a person about his or her immigration status, thus exposing themselves to liability for racial profiling under an array of constitutional provisions and federal statutes. *See, e.g.*, Lisa M. Seghetti et al., *Enforcing Immigration Law: The Role of State and Local Law Enforcement*, Congressional Research Service Report for Congress, Mar. 11, 2004, at 234 ("[A] high risk for civil rights violations may occur if state and local police do not obtain the requisite knowledge, training, and experience in

dealing with the enforcement of immigration laws."); *see generally* David Rudovsky, *Enforcement by Stereotypes and Serendipity: Racial Profiling and Stops and Searches without Cause*, 3 U. Pa. J. Const. L. 296 (2001) (discussing the Fourth Amendment, the Equal Protection clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and 42 U.S.C. § 1983 as potential vehicles for challenging racial profiling). INS agents, who receive specialized training in immigration law enforcement, are far less likely to succumb to this impermissible practice.

In addition, numerous states and localities have adopted ordinances and resolutions prohibiting police officers – but obviously not INS agents – from engaging in racial profiling. *See, e.g.*, Ark. Code. Ann. § 12-12-1402 (Michie 2003); H.R.J. Res. 22, 23rd Leg., 1st Sess. (Alaska 2003); Cal. Penal Code § 13519.4(d)-(f) (West 2004); Conn. Gen. Stat. § 54-1l (1999); Ky. Rev. Stat. Ann. § 15A.195 (Banks-Baldwin 2001); Minn. Stat. § 626.8471 (2001); Mont. Code Ann. § 44-2-117 (2003); Neb. Rev. Stat. §§ 20-501, 20-504(1) (2004); Okla. Stat. Ann. Tit. 22 § 34.3 (West 2000); R.I. Gen. Laws § 31-21.1-2 (2002); Tenn. Code Ann. § 45-6-223 (2001); Tex. Crim. Proc. Code Ann. art. 2.131 (Vernon 1977); Wash. Rev. Code § 43.101.410 (2002); W. Va. Code § 30-29-10 (2002); Anchorage, Alaska, Res. 223-2003 (July 15, 2003); Berkeley, Cal., Res. No. 61,747-N.S. (Sept. 10, 2002); Boulder, Colo., Res. Expressing the Commitment of the City of Boulder to Civil Rights and Liberties and Acknowledging that the Boulder Police Department Already Incorporates Most of the Following in their Current Policies and Procedures (July 23, 2002); Denver, Colo., Res. No. 13 (Mar. 18, 2002); N.J. Exec. Order No. 127, 33 N.J. Reg. 2233(a) (May 23, 2001); Nev. Rev. Stat. 289.820 (2001); N.Y., N.Y., Res. No. 60 (Feb. 4, 2004). Unlike INS agents, police officers could be held liable under these state and local laws. Thus, the overall

risk of liability police officers face when they undertake the enforcement of federal immigration law is clearly greater than that faced by INS agents.

On balance, the significant costs associated with local enforcement of immigration law – measured by the strain on state and local resources and by the damage to police-community relations and public safety – nullify any purported benefits of pursuing this exclusively federal interest.

CONCLUSION

In light of the overlooked complexities inherent in the first question presented by Petitioners as well as the damaging consequences a ruling on this question could have on state and local law enforcement, *amici* join Respondent in urging the Court to decide this case on other grounds.

Respectfully submitted,

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